

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-0107V

UNPUBLISHED

BERNALEO HENDERSON,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: January 28, 2022

Special Processing Unit (SPU); Joint
Stipulation on Damages; Influenza
(Flu); Guillain-Barré syndrome
("GBS").

Alison H. Haskins, Maglio Christopher & Toale, PA, Sarasota, FL, for Petitioner.

Camille Michelle Collett, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON JOINT STIPULATION¹

On January 22, 2019, Bernaleo Henderson filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the "Vaccine Act"). Petitioner alleges that as a result of receiving the influenza ("flu") vaccine on November 18, 2017, he developed Guillain-Barré syndrome ("GBS") with residual effects persisting for more than six months.

On January 28, 2022, the parties filed the attached joint stipulation, which states that a decision should be entered awarding compensation. I find the stipulation reasonable and adopt it as my decision awarding damages, on the terms set forth therein.

¹ Because this unpublished opinion contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the opinion will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Pursuant to the terms stated in the attached Stipulation, I **award** the following compensation:

- A lump sum of \$1,836.48, representing compensation for full satisfaction of the Government of the Virgin Islands of the United States Medicaid lien, in the form of a check payable jointly to Petitioner and:

**Government of the Virgin Islands Medicaid Program
c/o Department of Human Services
VI Medicaid Program
1303 Hospital Ground, Ste 1
St. Thomas, VI 00802**

Petitioner agrees to endorse this payment to the Government of the Virgin Islands Medicaid Program;

- A lump sum of \$12,867.63, representing the balance due on Petitioner's past incurred medical expenses, in the form of a check payable jointly to Petitioner and Palm Beach Gardens Medical Center. Petitioner agrees to endorse this payment to Palm Beach Gardens Medical Center;
- A lump sum of \$28,000.00, representing the balance due on Petitioner's past incurred medical expenses, in the form of a check payable jointly to Petitioner and St. Mary's Medical Center. Petitioner agrees to endorse this payment to St. Mary's Medical Center; and
- A lump sum of \$170,000.00 in the form of a check payable to Petitioner. This amount represents compensation for all items of damages that would be available under Section 15(a). Stipulation at ¶ 8.

I approve the requested amount for Petitioner's compensation. In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

BERNALEO HENDERSON,

Petitioner,

V.

SECRETARY OF HEALTH AND HUMAN
SERVICES,

Respondent.

No. 19-107V

Chief Special Master Corcoran
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Bernaleo Henderson (“petitioner”) filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the “Vaccine Program”). The petition seeks compensation for injuries allegedly related to petitioner’s receipt of an influenza (“flu”), which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3 (a).

2. Petitioner received his flu immunization on November 18, 2017.

3. The vaccine was administered within the United States.

4. Petitioner alleges that as a result of receiving the flu vaccine he developed Guillain-Barré Syndrome (“GBS”) and experienced the residual effects of this injury for more than six months.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of his condition.

6. Respondent denies that petitioner sustained a GBS Table injury, and denies that petitioner's alleged GBS and its residual effects were caused-in-fact by his flu vaccine. Respondent further denies that the vaccine caused petitioner any other injury or his current condition.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payments:

- a. a lump sum of **\$1,836.48**, representing compensation for full satisfaction of the Government of the Virgin Islands of the United States Medicaid lien, in the form of a check payable jointly to petitioner and:

Government of the Virgin Islands Medicaid Program
c/o Department of Human Services
VI Medicaid Program
1303 Hospital Ground, Ste 1
St. Thomas, VI 00802

Petitioner agrees to endorse this payment to the Government of the Virgin Islands Medicaid Program;

- b. a lump sum of **\$12,867.63**, representing the balance due on petitioner's past incurred medical expenses, in the form of a check payable jointly to petitioner and Palm Beach Gardens Medical Center. Petitioner agrees to endorse this payment to Palm Beach Gardens Medical Center;
- c. a lump sum of **\$28,000.00**, representing the balance due on petitioner's past incurred medical expenses, in the form of a check payable jointly to petitioner and St. Mary's Medical Center. Petitioner agrees to endorse this payment to St. Mary's Medical Center; and

- d. a lump sum of **\$170,000.00** in the form of a check payable to petitioner. This amount represents compensation for all remaining damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and his attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or entities that provide health services on a pre-paid basis.

11. Payment made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs and past unreimbursable expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

13. In return for the payments described in paragraphs 8 and 9, petitioner, in his individual capacity, and on behalf of his heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and

the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of petitioner resulting from, or alleged to have resulted from, the flu vaccination administered on November 18, 2017, as alleged by petitioner in his petition for vaccine compensation filed on January 22, 2019, in the United States Court of Federal Claims as petition No. 19-0107V.

14. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

15. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

16. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

18. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

Respectfully submitted,

PETITIONER:


BERNALEO HENDERSON


**ATTORNEY OF RECORD FOR
PETITIONER:**

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Dated: 01/25/2022